

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THOMAS W.S. RICHEY,

Plaintiff,

v.

D. DAHNE,

Defendant.

CASE NO. C12-5060BHS

ORDER GRANTING
PLAINTIFF'S MOTION FOR
RELIEF FROM JUDGMENT AND
VACATING PRIOR ORDER AND
JUDGMENT

This matter comes before the Court on Plaintiff Thomas W.S. Richey's ("Richey") (Dkt. 62) motion for relief of judgment pursuant to FRCP 60(b)(1). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion.

I. PROCEDURAL AND FACTUAL BACKGROUND

Both parties assert that there are no disputed issues of material facts. Dkt. 46 at 1–2; Dkt. 52 at 1. The Court, however, overlooked an important fact that requires additional consideration of Richey's claims.

1 On June 27, 2016, the Honorable Karen L. Strombom, United States Magistrate
2 Judge, issued a Report and Recommendation (“R&R”) recommending that the Court
3 deny Richey’s motion for summary judgment and grant Defendant Dennis Dahne’s
4 (“Dahne”) motion for summary judgment because Dahne is entitled to qualified
5 immunity. Dkt. 59. Judge Strombom concluded (1) that material questions of fact exist
6 on Richey’s First Amendment claim, Dkt. 59 at 14, (2) that material questions of fact
7 exist on Richey’s retaliation claim, *Id.* at 16, and (3) Dahne is entitled to qualified
8 immunity because Richey’s constitutional rights were not clearly established, *Id.* at 19.

9 After both parties filed objections, the Court issued an order adopting in part and
10 modifying in part the R&R, granting Dahne’s motion for summary judgment, and
11 denying Richey’s motion for summary judgment. Dkt. 68. In relevant part, the Court
12 found that, out of the three interactions between Richey and corrections officers
13 regarding his grievance, Dahne personally participated in only one of those interactions.
14 Dkt. 68 at 2. On September 14, 2016, the Clerk entered a judgment in favor of Dahne
15 against Richey. Dkt. 69.

16 On September 19, 2016, Richey filed the instant motion asserting that Dahne
17 personally participated in two of the three interactions. Dkt. 70. On September 30, 2016,
18 Dahne responded. Dkt. 71. On October 4, 2016, Richey replied. Dkt. 72.

19 II. DISCUSSION

20 “On motion and just terms, the court may relieve a party or its legal representative
21 from a final judgment, order, or proceeding for . . . mistake, inadvertence, surprise, or
22 excusable neglect” Fed. R. Civ. P. 60(a)(1).

1 In this case, Richey moves to vacate the judgment based on mistake. The Court
2 overlooked the important fact that Dahne ordered Richey to rewrite the original
3 grievance. Although Dahne agrees with Richey's facts, he fails to address the merits of
4 his order that Richey rewrite the original grievance. Instead, he addresses the original
5 rewrite and the final administrative withdrawal. Thus, there is no opposition to Richey's
6 argument that the Court should vacate the judgment and address the merits of Dahne's
7 personal participation in the second order to rewrite the grievance. Accordingly, the
8 Court grants Richey's motion and will consider all of Richey's claims.

9 **III. ORDER**

10 Therefore, it is hereby **ORDERED** that Richey's motion for relief from judgment
11 (Dkt. 70) is **GRANTED**. The Clerk shall vacate the Court's previous order (Dkt. 68) and
12 vacate the judgment (Dkt. 69). The Court will issue a new order forthwith.

13 Dated this 15th day of December, 2016.

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16 BENJAMIN H. SETTLE
United States District Judge